

ZONING BOARD OF APPEALS
MEETING MINUTES

June 8, 2010

4:00 P.M.

CALL TO ORDER: Mr. John Stetler, Chairperson called meeting to order at 4:00 p.m.

ATTENDANCE:

Members Present:	Deland Davis	Carlyle Sims
	Greg Dunn	Becky Squires
	James Moreno	John Stetler

Members Absent: Mike Fatt

Staff Present: Jill Steele, Deputy City Attorney
Christine Hilton, Planning Supervisor
Glenn Perian, Senior Planner
Leona Parrish, Admin. Assistant, Planning Dept.

ADDITIONS OR DELETIONS TO THE AGENDA: None

OLD BUSINESS: None

Mr. John Stetler, Chairperson stated the meeting procedure and that everyone present may speak either for or against an appeal. He stated he will ask for a staff report to be read and then open the public hearing. At the public hearing persons may come forward and state their name and address for the record as it is being recorded and then speak either for or against an appeal. The public hearing will then be closed and the zoning board will discuss and make a decision. Mr. John Stetler stated if denied they may appeal to the Circuit Court.

NEW BUSINESS:

Appeal #Z-07-10: (166 Honey Lane)

Mr. John Stetler stated for the record this was a petition of Ms. Hollis Conway, 166 Honey Lane, Battle Creek, MI 49015; requesting a variance to allow a 6 ft. privacy fence on a corner (side) lot where 4 ft. is only allowed for property zoned "R-1B Single Family Residential District". The property is legally described as: WHITE & HUNT ADD W 1/2 OF LOT 17 (**Commonly known as 166 Honey Lane.**) Parcel #9460-23-917-0. The fence permit application was denied because of Planning and Zoning Code, Chapter 1298.05(b)(2) & (5).

Mr. Glenn Perian read the staff report and findings regarding the variance request: Appeal #Z-07-10 is a petition from Ms. Hollis Conway seeking a dimensional variance to waive the maximum height for a fence in a front yard at 166 Honey Ln. The request is to allow a 6' tall fence in the front yard as shown in yellow on the map displayed behind the board. The property is located in an R-1B zone where the maximum height for a fence in the front yard is 4 feet.

Mr. Perian noted the subject lot is rectangular in shape and is located on a corner lot on the north east corner of Honey Lane and Lillie Ave. The subject lot is approximately 51.5 feet wide and does not meet the minimum lot width standard for the R-1B zone. The land is generally flat with no observable grade changes. Stated staff is recommending approval of appeal #Z-07-10 with three conditions based on the following findings and those listed in the staff report:

- 1) Staff believes that there is an unusual practical difficulty associated with this lot due to the narrowness of the lot and its location on a corner. As previously mentioned, the subject lot is 51.5' wide with street frontage on Honey Lane and Lillie Ave.
- 2) Staff does not believe the practical difficulty is self created in this case.
- 3) Staff finds that the practical difficulties are exceptional and peculiar to the subject property.
- 4) Staff believes the alleged practical difficulties result from conditions that do not generally exist throughout the City.
- 5) Staff does not believe practical difficulty is deemed a financial hardship in this case and is substantially more than a mere inconvenience.

Mr. Perian stated that based on the above noted findings and those articulated in the staff report; they are recommending approval of this appeal with the following conditions: 1.) The top one foot portion of the fence be of a see through design similar to the example shown on page 3 of the staff report. 2.) The true property line will be defined and the proposed fence will not encroach on the public ROW. 3.) The proposed fence will be installed at an angle starting at least 10' south of the existing driveway and angled towards the SW corner of the garage in order to create clear vision for vehicles backing out of the driveway in accordance with Chapter 1298.08 of the Planning and Zoning code and shown on the aerial map posted and handed out for today's meeting.

Ms. Hollis Conway, 166 Honey Lane, came forward to speak and asked if she could change her request to lower the fence height from 6 ft. to 5 ft. and omit the suggested one-foot lattice on the top as that is not a design they prefer. Stated she was not sure regarding the current fence of possibly not being on their property line and possibly needing to be moved in an additional 4 ft.; asked if variance request is approved, could the new fence be placed where the current fence is or would they need move the fence as they have flower beds that would then need to be moved.

Mr. Perian stated there seems to be a discrepancy regarding the property line location between the aerial map and where the existing fence is placed now. Stated the new privacy fence cannot be placed within the city right-of-way. Ms. Conway asked if the property would need to be surveyed and if they would need to pay for and stated they purchased the property from Ms. Gold, who said her property had been surveyed and marked in the past and would look for those markers.

Mr. Greg Dunn asked when they had purchased this property. Ms. Conway stated in 2005.

Mr. Deland Davis asked Mr. Perian regarding the staff report stating fence is in front-yard, and believes the house faces Honey Street and the map shows the fence on the side lot. Mr. Perian stated that on page one in the staff report there is a sketch showing what the ordinance allows for fence height; that the areas in (pink 4 ft.), (25 ft. beyond can be 5 ft.), etc. which shows a representation of where the applicant wishes to put a fence. He also noted that having a corner property it is considered to have two fronts.

Mr. Carlyle Sims asked regarding Lillie Avenue being a narrow street and would there be enough room in the right-of-way for snow removal. Mr. Perian stated the lot lines and road right-of-way would need to be defined to show there is room for utility work and snow removal etc.

Mr. James Moreno asked if a survey report would need to be provided to prove where the lot lines are when they pull the fence permit. Mr. Perian stated yes, if approved by this board it would need to be shown where the property lines are located.

Ms. Loretta Gold, 143 Lillie Avenue, came forward to speak in opposition. Stated her parents were the previous owners of this property and if necessary she can help locate the property line stakes. Said she is not in favor of the fence variance as the aesthetics is not in accordance with the neighborhood and that her main issue is safety as there is a hill and children go fast and if a fence is there, they may not be seen. Ms. Gold noted a few years ago she had an attempted home invasion; and with this new fence, she may not see if that person was coming around her home. Stated she is not comfortable as her property sits lower and her visibility would be impeded.

Mr. Greg Dunn noted that even if the 5 ft. fence were not approved they would still be allowed by ordinance to put a 4 ft. privacy fence up and they are only asking for one additional foot in height. Ms. Gold stated yes she understands, but with her home sitting 3 to 4 ft. lower and if you add 3 to 4 ft. on a 5 ft. fence, you would have a wall you cannot see through; and with a driveway that comes out on the basement level of her home; said she still wants to be able to see the kids on the street.

Ms. Rachel Roach, 164 Honey Lane, came forward to speak in favor of this variance request. Stated she is a neighbor and sees how their dogs are taunted with persons going across their property and coming into there backyard, said that for a safety and privacy standpoint they need the fence to be able to enjoy their own yard.

Mr. Greg Dunn asked the petitioner if this variance request is for their privacy. Ms. Conway stated yes, there have been times when persons have stolen from their back porch and tried to enter their home when they were home; said they have no privacy being on a corner and if they have children in the future, they want them to be safe. Ms. Conway noted she had spoken with Ms. Gold and her driveway view would not be blocked any more that what it is currently as there are some bushes already at the end of their driveway.

Mr. John Stetler asked if there were any others here to speak for or against this variance, seeing none he called this public hearing to a close and would entertain a motion.

MOTION: MR. CARLYLE SIMS MADE A MOTION TO APPROVE #Z-07-10 FOR A VARIANCE FOR PROPERTY LOCATED AT 166 HONEY LANE AS SUBMITTED WITH CONDITIONS AND FINDINGS NOTED IN THE STAFF REPORT; SUPPORTED BY MS. BECKY SQUIRES.

Discussion:

Mr. Deland Davis asked if they approve a 5 ft. fence, how does the city feel about having the lattice on the top condition being eliminated. Mr. Perian stated it could be eliminated as one of the conditions for approval; staff thought if it were to be 6 ft. it would provide a more airy feel for the neighborhood if the

top had 1 ft. of lattice. Stated it would need to be determined by the board if that condition were removed.

Mr. Davis stated the motion made was to include the decoration at the top of the fence.

WITHDREW MOTION: (SUPPORT WITHDRAWN)

MOTION: MR. CARLYLE SIMS MADE A MOTION TO APPROVE #Z-07-10 TO ALLOW A 5 FT. PRIVACY FENCE ON A CORNER SIDE LOT "R-1B SINGLE FAMILY RESIDENTIAL DISTRICT" AS SUBMITTED WITH CONDITIONS AND FINDINGS NOTED IN THE STAFF REPORT AND TO OMIT CONDITION #1.; FOR PROPERTY LOCATED AT 166 HONEY LANE; SUPPORTED BY MS. BECKY SQUIRES.

Mr. Deland Davis noted he liked the placement of the fence, particularly how the corner was angled for visibility; stated he was in agreement with the report.

Mr. Greg Dunn stated he agrees with the staff report and that it was not a self created condition because of this property being narrow, on a corner lot and technically not having a back yard. Noted the property owner by right of ordinance could still put a 6 ft. privacy fence between her and her neighbor and feel they have tried to compromise by agreeing to lower the height to 5 ft. from 6 ft.

Ms. Jill Steele noted it would be helpful that the hand-out sketch be referenced as what is being allowed, so the neighbor realizes the placement of the fence request. Mr. Stetler asked if they have received a copy of the map diagram handed out. Mr. Perian stated they had received a copy and is aware of what the board is approving.

Mr. John Stetler suggested to the petitioner that if they have had a survey reasonably recent, that the surveyor should be able to provide a sketch comparatively inexpensively.

MR. JOHN STETLER ASKED FOR ANY ADDITIONAL COMMENTS, SEEING NONE A VOTE WAS TAKEN FOR THE VARIANCE; ALL IN FAVOR; NONE OPPOSED: MOTION APPROVED.

APPROVAL OF MINUTES:

MOTION: WAS MADE BY MR. JAMES MORENO TO APPROVE THE APRIL 13, 2010 ZONING BOARD OF APPEALS MINUTES; SUPPORTED BY MR. DELAND DAVIS. ALL IN FAVOR, NONE OPPOSED, MOTION CARRIED - APPROVED.

COMMENTS BY THE PUBLIC:

Ms. Loretta Gold, 143 Lillie Avenue, stated the petitioner's privacy is worth more than her safety and children on the street.

Mr. Stetler stated he could not see a significant difference with the height of the fence being 4 ft. or 5 ft. height regarding Ms. Gold safety, as a 4 ft. fence is permissible and if you are already lower and would block your view, the additional foot would not make a difference. Ms. Gold stated she can see with their current fence.

COMMENTS BY THE MEMBERS / STAFF: None

ADJOURNMENT: Mr. John Stetler moved for the meeting to be adjourned; all in favor, meeting was adjourned at 4:33 p.m.

Submitted by: Leona A. Parrish
Administrative Assistant, Planning Department